A

LI SHISHUN v. OSMAN AFFENDI MOHD SHALLEH & ORS AND OTHER APPLICATIONS

HIGH COURT MALAYA, KUALA LUMPUR
COLLIN LAWRENCE SEQUERAH J
[CRIMINAL APPLICATION NO: WA-44-(78-96)-04-2021]
B 27 JULY 2021

CRIMINAL PROCEDURE: *Habeas corpus – Application for – Application for release from detention – Non-citizen applicants involved in activities of management and promotion of unlawful gambling – Applicants detained under Prevention of*
C *Crime Act 1959 ('POCA') – Whether detention outside scope of POCA – Whether unlawful gambling fall within POCA – Whether POCA applied to non-citizens – Federal Constitution, arts. 5(2), 149(1) & 151 – Courts of Judicature Act 1964, s. 25(2) – Interpretation Acts 1948 and 1967, ss. 15 & 17A*

D This was an application by way of *habeas corpus* for the release from detention of 19 persons ('applicants') from the Peoples Republic of China pursuant to art. 5(2) of the Federal Constitution ('FC'), read together with s. 25(2) of the Courts of Judicature Act 1964 ('CJA') and Chapter XXXVI of the Criminal Procedure Code ('CPC'). The applicants were involved in activities of management and promotion of unlawful gambling and were detained for
E varying periods pursuant to the order made by the second respondent on the application by the first respondent under s. 4(2) of the Prevention of Crime Act 1959 ('POCA'). The common grounds raised by the applicants in support of their applications were (i) their detention were outside the scope of the POCA. Since the POCA did not include para. 1(f) of art. 149 of the
F FC in its preamble but only included para. 1(a), the preamble was therefore only limited to para. 1(a). Hence, it was argued that unlawful gambling did not fall within the POCA; and (ii) the POCA had no application to them as they were foreign nationals since art. 151(1)(b) of the FC only makes reference to citizens.

G **Held (dismissing application):**

(1) The preamble of the POCA reproduces only para. (a) of art. 149(1) of the FC. However, if one were to continue reading the preamble, it goes on to state 'AND WHEREAS Parliament considers it necessary to stop such action' and reading further, it states 'NOW, THEREFORE,
H pursuant to art. 149 of the FC it is enacted by the Parliament of Malaysia as follows:' It is significant that the latter part of the recital mentions art. 149, meaning the whole of art. 149 and not art. 149(1)(a) alone. Logically, the phrase 'such action' must be taken to refer to the classes of action listed from paras. (a) to (f) of art. 149(1) of the FC. Further,
I following the maxim that Parliament does not legislate in vain, the

phrase 'pursuant to art. 149' must be taken to refer to art. 149 of the FC in its entirety. If one were to go further and read art. 149(2) of the FC, the phrase 'A law containing such a recital as is mentioned in cl. (1)' must also be taken to refer to paras. (a) to (f) in art. 149(1) since it did not specify only the activities mentioned in para. (a). Going further and examining the last paragraph to art. 149(1) of the FC namely 'any provision of law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of arts. 5, 9, 10 or 13', the question to be asked was, exactly what provision of law designed to stop or prevent that action is stated to be valid notwithstanding its inconsistency with the other articles mentioned? The answer to the question could not be that the phrase 'that action' only referred to para. (a) simply because it did not say so. Logically thus, the recital in the POCA must be read to include the whole of art. 149(1), meaning paras. (a) to (f) inclusive. The POCA was therefore enacted by Parliament pursuant to art. 149 as a whole and not just to art. 149(1)(a) of the FC. (paras 19 & 28-33)

(2) The title to art. 149 of the FC itself states 'Legislation against subversion, action prejudicial to order, *etc*.' Besides the reference to public order, the use of the word '*et cetera*' would also indicate that the scope of art. 149 was not meant to only apply to para. (a) in the context of the recital to the POCA. In addition, the provisions in (a) to (f) in art. 149 of the FC are disjunctive by reason of the word 'or'. The recital to the POCA must take its colour from the whole of art. 149(1) of the FC since the POCA was enacted pursuant to art. 149 and could not be read in isolation and restrictively. (paras 34 & 35)

(3) In interpreting the POCA, resort can be had to ss. 15 and 17A of the Interpretation Acts 1948 and 1967 ('Act'). Section 17A requires a provision of an Act to be read purposively. This is expressed to be so whether that purpose or object is expressly stated in the Act or not. Reading the POCA in a purposive manner, one has to regard that the overall objective of POCA would be to prevent any action described in art. 149(1)(a) to (f) of the FC. To contend otherwise would be to render paras. (b) to (f) of art. 149(1) in the context of the POCA, which is after all an Act to provide for the prevention of crime throughout Malaysia, otiose. (paras 36 & 41-43)

(4) Does the organisation and promotion of unlawful gambling, as stated in para. 5, Part 1, First Schedule of the POCA come within or fall in the ambit of acts which are prejudicial to public order? The phrase 'prejudicial to public order' is defined within a very wide ambit. Without actually going into detail of what does or does not amount to actions which are prejudicial to public order, it could be appreciated that the

A conduct of unlawful gambling could lead to other nefarious activities, like illegal moneylending. The contention that the grounds of detention and allegations of fact, namely, that unlawful gambling activities do not fall within the scope of the POCA, was misconceived and without merit. (paras 44, 47 & 67)

B **(5)** The long title and preamble of the POCA do not support the applicants' contention that the POCA only applied to citizens. The preamble is clear that the POCA's net was intended to be cast far and wide enough to cover both persons where inside Malaysia, namely citizens, as well as persons outside Malaysia, namely non-citizens. There could not be C and exist a situation where while a citizen is subject to the full force of the law for committing murder or robbery, the non-citizen is immune from such acts. It would be anathema to the preservation of law and order and thus against public policy in this country if a situation where non-citizens are exempt from the reach of laws including those D pertaining to preventive detention were to obtain. (paras 85, 88, 105 & 107)

Case(s) referred to:

Badan Peguam Malaysia v. Kerajaan Malaysia [2008] 1 CLJ 521 FC ***(refd)***

Chua Kian Voon v. Menteri Dalam Negeri & Ors [2020] 1 CLJ 747 FC ***(refd)***

E *Darma Suria Risman Saleh v. Menteri Dalam Negeri, Malaysia & Ors [2010] 1 CLJ 300 FC* ***(refd)***

Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus [1981] 1 MLJ 29 ***(refd)***

James v. Commonwealth of Australia [1936] AC 578 ***(refd)***

Merdeka University Bhd v. Government of Malaysia [1981] CLJ 175; [1981] CLJ (Rep) 191 HC ***(refd)***

F *PP v. Datuk Hj Harun Hj Idris & Ors [1977] 1 LNS 92 HC* ***(refd)***

Re Tan Boon Liat @ Allen & Anor Et Al; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri & Ors And Other Appeals [1977] 1 LNS 110 FC ***(refd)***

Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals [2021] 5 CLJ 581 FC ***(refd)***

G **Legislation referred to:**

Courts of Judicature Act 1964, s. 25(2)

Federal Constitution, arts. 4, 5(3), (4), (5), 8, 9, 10, 13, 149(1)(a), (b), (c), (d), (e), (f), (2), 151(1)(a), (b), (2)

Immigration Act 1959/63, ss. 9(1)(c), 32

H Interpretation Acts 1948 and 1967, ss. 15, 17A

Prevention of Crime Act 1959, ss. 3(1), (2), 4(1)(a), (2), 22, 23(2)(b), First Schedule Part I para 5

Prevention of Crime (Advisory Board Procedure) Regulations 2014, reg. 11(2)

Prevention of Crime (Identity Card) Regulations 2017, regs. 2, 3(1), (2), (3), (4)

Rules of Court 2012, O. 53

I

For the applicants - Gobind Singh Deo, Jacky Loi, Lim Jing Wen, Haijan Omar, PG Cyril, Loh Suk Hua & Meneesha Kaur; M/s Gobind Singh Deo & M/s TY Teh & Partners
For the respondents - Muhammad Sinti, Zulkifli Abdullah & Farah Ezli Yusop Khan; DPPs

Reported by Lina E

JUDGMENT

Collin Lawrence Sequerah J:

Introduction

[1] This is an application by way of *habeas corpus* for the release from detention of 19 persons from the Peoples Republic of China pursuant to art. 5(2) of the Federal Constitution read together with s. 25(2) of the Courts of Judicature Act 1964 and Chapter XXXVI of the Criminal Procedure Code.

[2] All the applicants' abovenamed were detained for varying periods of six months pursuant to orders made by the second respondent on application by the first respondent under s. 4(2) of the Prevention of Crime Act 1959 ("POCA").

[3] The grounds in support of the application are that the applicants are involved in the activities of management and promotion of unlawful online gambling or "aktiviti pengelolaan dan penggalakan judi haram".

[4] The common ground raised by the applicants in support of their applications is firstly, that their grounds of detention are outside the scope of POCA and secondly, that POCA has no application to them as they are foreign nationals.

[5] This court initially heard only the applications filed by the applicants – Liu Bi, Wang Xueyan and Tan Zechi as there were some irregularities regarding the identification particulars of the rest of the applicants which were raised by learned counsel for the respondents.

[6] It was agreed by learned counsel for the applicants that the decision in respect of the applicants Liu Bi, Wang Xueyan and Tan Zechi would bind the rest of the applicants. In the event, the irregularities regarding the identities of the other applicants were never resolved. Learned counsel for the applicants, however, indicated that notwithstanding, he would stick to his earlier undertaking that the decision here would bind all the applicants. This decision and the grounds are, therefore, in respect of all the named applicants.

A **Writ Of *Habeas Corpus* (Jurisdiction, Procedure And Juridical Basis)**

[7] The court's power and jurisdiction to entertain applications for *habeas corpus* emanates from the inherent powers granted to the superior courts under the Schedule to the Courts of Judicature Act 1964 (Act 91) and the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1950 (Act
B 137).

[8] The relevant procedure relating to judicial review is governed by O. 53 of the Rules of Court 2012.

[9] The rudimentary origins of the writ of *habeas corpus* can be traced back
C to the *Magna Carta* of King John at Runnymede in England which granted all free men immunity from illegal imprisonment although the co-relation between the Magna Carta and the writ of *habeas corpus* only took form with the enactment of the Habeas Corpus Acts of 1640 and 1679 in England.

[10] Across the Atlantic, the founding fathers of America ensured that the
D concept and rights associated with the writ of *habeas corpus* featured prominently in the American Constitution.

[11] At home, the Federal Court speaking through Zawawi Salleh FCJ in *Chua Kian Voon v. Menteri Dalam Negeri & Ors* [2020] 1 CLJ 747 had occasion
E to reach back into the mists of time and trace the history of the writ in an illuminating expose which I can do no better than to reproduce *verbatim* as follows:

> ... [7] *The term habeas corpus refers most commonly to a specific writ known in full as "habeas corpus ad subjiciendum", a prerogative writ ordering that a prisoner be*
> F *brought to the court so that it can be determined whether or not the prisoner is being imprisoned lawfully. Put simply, a writ of habeas corpus is a challenge to the legality of a prisoner's detention. The words "habeas corpus" is a Latin law term. Its literal English translation is: "you have the body".*
>
> [8] The writ of *habeas corpus*, described by Blackstone as the "great and efficacious writ, in all manner of illegal confinement" (see: *William*
> G *Blackstone's Commentaries on the Law of England*, 1st edn., 1765, vol. 3 at p. 131), functions as a judicial remedy aimed at preventing the arbitrary use of Executive power to imprison individuals unlawfully. The use of *habeas corpus* has roots in English common law dating back to the fourteenth century. *It was first expressed in the Magna Carta of 1215, which stated, "No free*
> H *man shall be seized, or imprisoned, or disseized, or outlawed, or exiled, or injured in any way, nor we will enter on him or send against him except by the lawful judgment of his peers, or by the law of the land".*
>
> [9] The *habeas corpus* remedy is recognised in the countries of the Anglo-American legal system but is generally not found in civil-law countries, although some of them have adopted comparable procedures.

I

[10] In Malaysia, the Federal Constitution makes no explicit provisions for the writ of *habeas corpus*. *The legal basis for the writ of habeas corpus in Malaysia is art. 5(2) of the constitution and ss. 23, 28, and 365 of the Criminal Procedure Code. In addition, there are statutory provisions in s. 25(2) of the Courts of Judicature Act 1964 (along with para. 1 of the Schedule)* (see: *Munusamy v. Subramaniam & Or*s [1969] 1 LNS 112; [1969] 2 MLJ 108).

[11] The writ of *habeas corpus* is the fundamental instrument for safeguarding individuals against arbitrary and unlawful state action. In this connection, the observation made by Choor Singh J in *Re Onkar Shrian* [1969] 1 LNS 155; [1970] 1 MLJ 28 as embraced by this court in *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81, where the judgment of Choor Singh J in *Re Onkar* (*supra*) was quoted as below is particularly instructive:

Where the personal freedom of an individual is wrongly interfered with by another, the release of the former from illegal detention may be effected by *habeas corpus. The illegal detention of a subject, that is a detention or imprisonment which is incapable of legal justification, is the basis of jurisdiction in habeas corpus.*

[12] The learned judge in *Nasharuddin Nasir* (*supra*) also quoted with approval the following passage in *Short & Mellor's Practice on the Crown Side of the King's Bench Division*, 2nd edn. at p. 309:

The primary object of the writ is for the purpose of bringing the body into court, and therefore, if that is impossible, the writ ought not to issue. It should not be used punitively but only remedially. In *R v. Barnado* [1892] AC 316, Lord Halsbury said that he could not agree to the proposition that if a court is satisfied that illegal detention has ceased before application for the writ has been made, nevertheless the writ might issue in order to vindicate the authority of the court against a person who has once, though not at the time of the issue of the writ, unlawfully detained another or wrongfully parted with the custody of another. In this the rest of the court agreed.

[13] *The writ of habeas corpus is a powerful remedy in the sense that it is not discretionary. It is distinct from the prerogative writs such as those of certiorari, prohibition and mandamus. The writ of habeas corpus must be issued if the court finds that the detenu is illegally or improperly detained.* In *Yeap Hock Seng @ Ah Seng v. Minister of Home Affairs, Malaysia* [1975] 2 MLJ 279, Abdoolcader J (as His Lordship then was) had this to say at p. 281:

The grant of habeas corpus is as of right and not in the discretion of the court as in the case of such extraordinary legal remedies as certiorari, prohibition and mandamus. It is a writ of right against which no privilege of person or place can be of any avail (*R v. Pell and Offly* 84 All ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personal liberty of an individual in the form of *habeas corpus* and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of *State ex rel Evans v. Broaddus* 245 Mo 123 140 that at least in times of peace every human power must give way to the writ of *habeas corpus* and no prison door is stout enough to stand in its way.

A *Where a detainee challenges his detention as being illegal, the burden lies on the detaining authority to show that the detention is legal.* In *SK Takaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia* [2009] 6 CLJ 705, Gopal Sri Ram FCJ held as follows at p. 710:

It is settled law that on an application for *habeas corpus* the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See, *Chng Suan Tze v. The Minister of Home Affairs & Ors and Other Appeals* [1988] 1 LNS 162. In *Mohinuddin v. District Magistrate, Beed* AIR [1987] SC 1977, the Supreme Court of India observed as follows in the context of art. 221 of the Indian Constitution from which is drawn our art. 151:

It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This Court on more occasions than one has dealt with the question and it is now well-settled that it is incumbent on the State to satisfy the Court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in Art. 22(5).

[15] *After the party who made the detention succeeded in proving that the detention is in accordance with the law, the onus then shifts to the detainee, especially if he alleges bad faith* (see: *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 129).

[16] *A detainee is entitled to take advantage of any technical defect which has the effect of invalidating the detention* (see: *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 4 CLJ 47). Even if the detention was originally made in the exercise of a legal power, the said detention order (may) subsequently becomes invalid over a passage of time (see: *Lui Ah Yong v. Superintendent of Prisons, Penang* [1975] 1 LNS 91; [1977] 2 MLJ 226; *Jayaganesan Ramakrishnan v. Timbalan Menteri Dalam Negeri Malaysia & Ors* [2019] 9 CLJ 725; [2019] 5 AMR 509; *Vishnu Telagaran v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 9 CLJ 177) (emphasis added)

[12] The above passage not only traces the origins of the writ but also encapsulates most of the current applicable law on the subject.

Analysis, Findings And Decision

[13] The applicants have premised their application on two grounds as follows:

(i) The grounds of detention are outside the scope of POCA.

(ii) POCA has no application to the detenus as they are foreign nationals. Their detention under that Act is, therefore, unlawful.

(i) The Grounds Of Detention Are Outside The Scope Of POCA

[14] The grounds of detention and allegations of facts given by the respondents for the applicants' detention respectively are as follows:

> **Alasan Yang Atasnya Perintah Itu Dibuat**
>
> Penama adalah ahli kumpulan yang terlibat dalam perjudian atas talian haram di Kuala Lumpur. Oleh itu, penama adalah termasuk dalam Kategori Yang Boleh Didaftarkan, Perenggan 5, Bahagian 1, Jadual Pertama, Akta Pencegahan Jenayah 1959 (Akta 297). Perintah Tahanan adalah perlu dibuat ke atas penama bagi tujuan kepentingan ketenteraman awam dan pencegahan jenayah.
>
> **Pengataan Fakta Yang Perintah Itu Diasaskan**
>
> 1. Bahawa kamu, pada 16 Oktober 2020, bertempat di alamat Block A-7-1, The Kuala Katana II Condominium, Jalan Ampang Hilir, Taman U-Thant, 55000 Kuala Lumpur yang merupakan tempat pusat panggilan (call centre) perjudian haram dalam talian antarabangsa telah bertindak sebagai pengendali (operator) perjudian dalam talian yang berperanan menarik pelanggan bertaruh dan berjudi secara haram menggunakan laman sesawang www.jq2828.com. Kamu dan rakan sejenayah kamu telah memperolehi hasil dari pertaruhan perjudian haram dalam laman sesawang tersebut.

[15] The applicants' submission is that since the POCA does not include para. 1(f) of art. 149 of the Federal Constitution (FC) in its preamble but only includes para. 1(a), the preamble is, therefore, only limited to para. 1(a).

[16] Hence, the argument that the activities stated in the grounds and allegations of fact namely, unlawful gambling, do not fall within the POCA.

[17] Article 149 of the FC reads as follows:

> 149. Legislation against subversion, action prejudicial to public order, etc.
>
> (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:
>
> (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
>
> (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or
>
> (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
>
> (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or

A (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or

(f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,

B any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

C (2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.

D **[18]** The recital to the POCA reads:

Long Title

An Act to provide for the more effectual prevention of crime throughout Malaysia and for the control of criminals, members of secret societies, terrorists and other undesirable persons, and for matters incidental
E thereto.

Preamble

WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia to cause, or to cause a substantial number of citizens to fear, organised violence
F against persons or property;

AND WHEREAS Parliament considers it necessary to stop such action;

NOW, THEREFORE, pursuant to Article 149 of the Federal Constitution It Is ENACTED by the Parliament of Malaysia as follows:
G …

[19] As can be discerned, the preamble of the POCA reproduces only para. (a) of art. 149(1) of the FC. Accordingly, learned counsel for the applicants submits that it is only "that law" which is designed to stop or prevent "that action" as described in art. 149 which is valid. POCA is thus, not such a law
H designed to stop "that action".

[20] To put another way, the applicants contend that para. (1)(a) of art. 149 is limited in its application to "organised violence against persons and property" and unlawful gambling does not fall within this category.

[21] It was also contended that s. 4(1)(a) POCA is only confined to the
I activity spelt out in para. 1(a) of art. 149 FC.

[22] It was, therefore, submitted that para. 1(f) of art. 149 FC which relates to action that is prejudicial to public order in, or the security of, the Federation or any part thereof, cannot be read into the POCA. A

[23] Against that background, learned counsel for the applicants contended that the facts relied upon by the Minister in support of the detention of the applicants namely, the grounds and allegations of fact relied upon, do not make reference to persons "causing a substantial number of citizens to fear organised violence against persons or property" ie, para. 1(a) art. 149 and, therefore, the detentions of the applicants are unlawful. B

[24] The sub-issue that arises for consideration here thus is whether or not the recital to the POCA is taken to be limited to art. 149(1)(a) FC only as contended by the applicants? C

[25] They further contend that the scope and ambit of s. 4(1)(a) POCA is limited to art. 149(1)(a).

[26] Section 4(1)(a) POCA reads: D

> On production of a statement in writing signed by a police officer not below the rank of Inspector stating that there are grounds for believing that the name of that person should be entered on the Register, remand the person in police custody for a period of twenty-one days.

[27] Now, what is the action that is sought to be prevented by the POCA? Is the phrase "action" in the preamble to POCA to be construed with reference to only the opening paragraph? E

[28] If one were to continue reading the preamble, it goes on to state "AND WHEREAS Parliament considers it necessary to stop such action" and reading still further, it states, "NOW, THEREFORE, pursuant to art. 149 of the FC it is enacted by the Parliament of Malaysia as follows:" F

[29] It is significant that the latter part of the recital mentions art. 149 meaning the whole of art. 149 and not 149(1)(a) alone. Logically, the phrase "such action" must be taken to refer, therefore, to the classes of action listed from para. (a) to (f) of art. 149(1). G

[30] Further, following the maxim that Parliament does not legislate in vain, the phrase "pursuant to art. 149", must be taken to refer to art. 149 in its entirety. POCA, therefore, was enacted by Parliament pursuant to art. 149 as a whole and not just to 149(1)(a). H

[31] If one were to go further and read art. 149(2), the phrase "A law containing such a recital as is mentioned in cl. (1)" must also be taken to refer to paras. (a) to (f) in art. 149(1) since it does not specify only the activities mentioned in para. (a). Logically thus, the recital in POCA must be read to include the whole of art. 149(1) meaning paras. (a) to (f) inclusive. I

[32] Going still further and examining the last paragraph to art. 149(1) namely "any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of art. 5, 9, 10 or 13" the question to be asked is, exactly what provision of law designed to stop or prevent that action is stated to be valid notwithstanding its inconsistency with the other articles mentioned?

[33] The answer to the question cannot be that the phrase "that action" only refers to para. (a) simply because it does not say so. It must, therefore, be taken to include the whole of art. 149(1)(a) to (f).

[34] In addition, the title to art. 149 itself states, "Legislation against subversion, action prejudicial to public order, etc." Now, besides the reference to public order, the use of the word "*et cetera*" would also indicate that the scope of art. 149(1) was not meant to only apply to para. (a) in the context of the recital to POCA.

[35] In addition, the provisions in (a) to (f) in art. 149(1) are disjunctive by reason of the word "or". The recital to POCA must take its colour from the whole of art. 149(1) of the FC since POCA was enacted pursuant to art. 149 and cannot be read in isolation and restrictively, as contended for by the applicants.

[36] I also agree with learned Senior Federal Counsel (SFC) for the respondent that in interpreting POCA, resort can be had to s. 15 and s. 17A of the Interpretation Acts 1948 and 1967 (Act).

[37] Section 15 of the said Act states:

> 15. Long title, preamble and schedules.
>
> The long title and preamble and every schedule (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.

[38] Section 17A of the same Act states:

> 17A. Regard to be had to the purpose of Act.
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[39] The long title of POCA states that it is an Act to provide for the more effectual prevention of crime throughout Malaysia and for the control of criminals, members of secret societies, terrorists and other undesirable persons, and for matters incidental thereto.

[40] It is not without significance that it refers to other undesirable persons besides criminals, members of secret societies and terrorists. There are several classes of persons mentioned in paras. (a) to (f) of art. 149(1). The long title to POCA must, therefore, refer to other undesirable persons including those in para. (f) namely, persons whose actions are prejudicial to public order in, or the security of, the Federation or any part thereof.

[41] Section 17A of the said Act requires a provision of an Act to be read purposively. This is expressed to be so whether that purpose or object is expressly stated in the Act or not.

[42] Reading the POCA in a purposive manner, therefore, one has to regard that the overall objective of POCA would be to prevent any action as described in art. 149(1)(a) to (f).

[43] To contend otherwise would be to render paras. (b) to (f) of art. 149(1) in the context of the POCA, which is after all an act to provide for the prevention of crime throughout Malaysia, otiose.

[44] Does the organisation and promotion of unlawful gambling as stated in para. 5, Part I, First Schedule of POCA come within or fall in the ambit of acts which are prejudicial to public order as stated in art. 149(1)(f) FC?

[45] Paragraph 5, Part I, First Schedule reads:

FIRST SCHEDULE

[Sections 2 and 22]

REGISTRABLE CATEGORIES

PART I

1. All members of unlawful societies which:

   (i) …

   (ii) …

   (iii) …

2. …

3. …

4. …

5. All persons concerned in the organization and promotion of unlawful gaming.

6. …

7. …

8. …

[46] In this respect, one need only refer to the case of *Darma Suria Risman Saleh v. Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 CLJ 300 where the Federal Court speaking through Gopal Sri Ram FCJ held as follows:

> That then brings us to the central question whether the activity in which the appellant was involved in was prejudicial to public order. If it is not, then *habeas corpus* must issue. This is because whether particular activity comes within the scope of being prejudicial to public order is a question of law upon which the Minister's view is not conclusive. It is the court that is the final arbiter upon that question. *This much is made clear by the several authorities on the subject and is implicit from the leading case of Re Application of Tan Boon Liat [1976] 1 LNS 126 (affirmed on appeal in [1977] 2 MLJ 18) where Abdoolcader J said:*
>
> *The expression 'public order' is not defined anywhere but danger to human life and safety and the disturbance of public tranquillity must necessarily fall within the purview of the expression. It is used in a generic sense and is not necessarily antithetical to disorder, and is wide enough to include considerations of public safety within its signification.* The Supreme Court of India exhaustively discussed the import of the term 'public order' in *Romesh Thappar v. State of Madras* AIR [1950] SC 124, 127 (in particular at page 127) when it established the principle that the maintenance of public order is equated with *the maintenance of public tranquillity, that 'public safety' is a part of the wider concept of 'public order', that 'public safety' ordinarily means security of the public or their freedom from danger and in that sense will include the securing of public health, that is to say, anything which tends to prevent dangers to the public health may also be regarded as securing public safety.*
>
> …
>
> The question is: does the activity engaged in by the appellant come within the foregoing test? In our judgment it does. What the appellant was engaged in was the illegal export of stolen cars. *An act of smuggling stolen cars may per se not be prejudicial to public order but this is a case in which a syndicate was involved, as the grounds of detention clearly state. This activity had the effect of providing for thieves and would-be thieves a ready market for the disposal of stolen cars. This has the obvious potential to disrupt public tranquillity. Because no car may be safe from being either robbed or stolen and its recovery made impossible by reason of the appellant's assistance in their disposal. There is no doubt also that the activity engaged in by the appellant had the potential to disrupt the even tempo of the life of the community. The even tempo of life of the community is disrupted when there is serious risk of loss of property through theft. It follows that a reasonable decision-maker when faced with the facts set out in the statutory statement would have concluded that the appellant's activity was prejudicial to public order.* The Minister in the present instance did not therefore commit any error of law in making the order he did. (emphasis added)

[47] The phrase "prejudicial to public order" is therefore defined within a very wide ambit. Without actually going into detail of what does or does not amount to actions which are prejudicial to public order, it can be appreciated that the conduct of online unlawful gambling can lead to other nefarious activity like illegal moneylending.

[48] Resorting to heavy borrowing through means of illegal moneylending is often consequential or incidental upon the primary action of unlawful gambling.

[49] It is no secret that those prone to gambling often resort to heavy borrowing to finance their addiction. The resultant heavy borrowing through illegal means has resulted in the proliferation of the notorious and infamous "Ah long" whose activities have extended to threats to borrowers unable to pay back the sums loaned with exorbitant and unconscionable interest rates and consequently have led to even tragic suicides. The tentacles of the "Ah long" also extends to the family of the borrower where threats and shaming (throwing red paint) actions have been occasioned.

[50] This has in turn have subsequently even resulted in broken families and situations where parents have even disowned their children when they are unable to cope with the stress of these activities.

[51] It will be a hard stretch to contend that all of this cannot possibly fall within the ambit of actions prejudicial to public order.

[52] The inescapable conclusion therefore is that the activity of unlawful gambling fall within the scope of acts prejudicial to public order.

[53] To take the matter but one step further still, the fallout from the unlawful gambling activity could also as easily fall within the ambit of "organised violence against persons or property" within the meaning of para. (a) of art. 149(1) as can be seen from the above analysis.

[54] Recently, the Federal Court had occasion to deal with an almost similar issue in the case of *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581; [2021] MLJU 671.

[55] The relevant issues related to the instant case raised in the *Zaidi Kanapiah* case on appeal in support of a writ of *habeas corpus* being issued was that the Minister abused the power entrusted to him by s. 22 of POCA by including the Common Gaming Houses Act 1953 (CGHA) as item 5 of the First Schedule.

[56] It was argued that the Minister's power is provided by art. 149 FC as well as the recitals to the POCA and gaming by itself does not come within cl. (1)(a) of art. 149 FC and so he acted *ultra vires*.

[57] Learned counsel for the appellants in *Zaidi Kanapiah* also raised the issue that the allegations made against the appellants do not come within the scope of POCA because it is not a crime of "organised violence". The Federal Court by way of a majority did not favour the arguments raised above. In order to appreciate the reasoning employed in the majority decision and so as not to dilute that reasoning, it is best if I reproduce the relevant passage *verbatim* by Hasnah Mohammed Hashim FCJ as follows:

A The Schedule to POCA

[100] With regards to the Schedule to POCA *learned Counsel for the Appellants argued that by including "unlawful gaming" in paragraph 5 of Part I of the 1st Schedule of POCA falls beyond the ambit of "organised violence" against persons or property. Learned counsels for the Appellants contended that by incorporating "unlawful gaming" the Minister had abused his power under Section 22 of POCA as unlawful gaming is not a crime which can be classified as being as organised violence.* The Minister had wrongly classified it as coming within the recital as prescribed by the FC and by doing so had acted *ultra vires* POCA.

C [101] *Learned counsel for the Appellants further argued that gambling is not of a pervading character disturbing the general peace, tranquillity and order of society and therefore does not affect public order, thus a fortiori it cannot come within the phrase "organised violence against persons or property" which governs the spirit and intendment of POCA. It is the submission of the Appellants that "unlawful gaming" is not within the definition of "organised violence against persons or property".*

D [102] *Section 22 POCA empowers the Minister to amend the Schedules to the Act as and when necessary and it reads as follows:*

The Minister may, by order published in the Gazette, amend the Schedules.

[103] *Part I of the First Schedule lists the Registrable Categories as follows:*

E 1. All members of unlawful societies which:

(i) use Triad ritual; or

(ii) are constituted or used for purposes involving the commission of offences that are seizable under the law for the time being in force relating to criminal procedure; or

F (iii) maintain secrecy as to their objects.

2. Persons who belong to or consort with any group, body, gang or association of two or more persons who associate for purposes which include the commission of offences under the Penal Code.

G 3. All traffickers in dangerous drugs, including persons who live wholly or in part on the proceeds of drug trafficking.

4. All traffickers in persons, including persons who live wholly or in part on the proceeds of trafficking in persons.

5. *All persons concerned in the organisation and promotion of unlawful gaming.*

H 6. All smugglers of migrants, including persons who live wholly or in part on the proceeds of smuggling of migrants.

7. Persons who recruit, or agree to recruit, another person to be a member of an unlawful society or a gang or to participate in the commission of an offence.

I 8. Persons who engage in the commission or support of terrorist acts under the Penal Code. (emphasis added)

[104] *We cannot summarily dismiss Paragraph 5 of Part I of the 1st Schedule which has been in existence since POCA was promulgated in 1959, when Act A1459 amending POCA into a preventive law was laid down in Parliament, debated and passed, and even before Article 121 FC was amended. The original text reads as follows:*

> *5. All persons habitually concerned in the organisation and promotion of unlawful gaming.* (emphasis added)

[105] *The word "habitually" was deleted in 2014 vide the Prevention of Crime (Amendment of First and Second Schedule) Order 2014 [P.U.(A) 122/2014]. With the deletion para. 5 reads:*

> 5. All persons concerned in the organisation and promotion of unlawful gaming.

[106] *It can be surmised that from its inception in 1959, the Legislature had intended to include unlawful gaming as one of the categories under POCA. Parliament saw the necessity more than sixty years ago to include the organisation and promotion of unlawful gaming activities as such activities by secret societies, triads, gangsters operating gambling dens resulted in an upsurge of undesirable criminal activity, causing many people in business, hawkers and workers to live in fear. With the advent of technology, the organisation and promotion of unlawful gaming have become more sophisticated. Secret societies, triads and gangsters of yesteryears have morphed into criminal syndicates and cartels.*

[107] *The meaning of "organised violence against persons or property" must be assessed through the context and the entire scheme of POCA. The words "organised violence against persons or property" must not be interpreted restrictively as suggested. Unlawful gaming activity has evolved into a much more sophisticated illicit activity that even in this present day constitutes a threat to public order and safety.*

[108] *The intent of POCA as expressed in the long title of the Act is for effectual prevention of crime throughout Malaysia and for the control of criminals, members of secret societies, terrorists and other undesirable persons, and for matters incidental thereto.*

[109] The CGHA is essentially an Act to suppress and control common gaming houses, public gaming and public lotteries. Therefore, unlike POCA, under CGHA lawful gaming is permitted by the issuance of a license by the Minister of Finance. Under Section 27A CGHA the Minister of Finance may issue license authorising a company registered under the Companies Act 1965 [Act 125] to promote and organise gaming:

> (1) Notwithstanding this Act or the Betting Act 1953 [Act 495] or any other law relating to gaming, betting or lotteries, the Minister of Finance may, in his discretion, by licence authorize a company registered under the Companies Act 1965 [Act 125], other than a foreign company as defined in subsection 4(1) of that Act, to promote and organise gaming:

A (a) in respect of such game or games;

(b) on such premises;

(c) subject to the payment of such fees and duties; and

(d) subject to such other terms and conditions.

B [110] The CGHA was never included in the Schedule to POCA, neither was there any intention to include CGHA under POCA as suggested by the Appellants. Thus, the argument of learned counsel for the Appellants that the inclusion of gaming in the Schedule to POCA is unconstitutional is untenable for the reasons I have stated above.

C [111] *One of the arguments canvassed by learned counsel for the Appellants in support of its contention that POCA is unconstitutional is that the recital did not set out in full Clause (1) of Article 149 FC. By Act A1459 the following preamble was inserted in the Act:*

D *Whereas action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;*

And Whereas Parliament considers it necessary to stop such action;

E [112] *It is the argument of learned counsel that the failure of Parliament to incorporate in the Recital to the Act the complete Clause (1) of Article 149 FC prescribing the intent and purpose would necessarily mean that the POCA is invalid and therefore unconstitutional. With respect, I am unable to agree with learned counsel for the Appellants.*

F [113] *The long title of an Act recites the intent and purpose of the Act. In this case the preamble of POCA recited the purpose of the Act which is prevent any incursion or threat by a substantial body of persons within and outside Malaysia causing a substantial number of citizens to fear organised violence against persons or property. There is therefore no flaw in the Preamble as suggested by the Appellants to the extent that POCA be declared unconstitutional.* (emphasis added)

G **[58]** As can be readily appreciated, the above decision addresses some of the issues raised in the case before this court. Most of these have already been dealt with in this judgment earlier on.

[59] The slant put on the instant case was however somewhat slightly different in that it did not allege unconstitutionality of the POCA for failure H to recite the whole of art. 149 FC but contended that because of that omission, the grounds of detention and the allegations of facts relied upon do not come within the ambit of POCA. This issue has already been dealt with above and there is no need to address this again.

[60] With regard to the issue of unconstitutionality of POCA, the Federal I Court held that the words "organised violence against persons or property" in para. (a) to art. 149(1) FC must not be interpreted restrictively as suggested

and said that gaming activity has evolved into a much more sophisticated illicit activity that even in this present day constitutes a threat to public order and safety, a point already addressed above in this judgment by reliance on the very same reasoning employed by the Federal Court in *Zaidi bin Kanapiah.*

[61] There is a plethora of authorities that hold that the constitution must be interpreted liberally and not restrictively and not in a narrow and pedantic sense. See *Merdeka University Bhd v. Government of Malaysia* [1981] CLJ 175; [1981] CLJ (Rep) 191; [1981] 2 MLJ 356, *PP v. Datuk Hj Harun Hj Idris & Ors* [1977] 1 LNS 92, *James v. Commonwealth of Australia* [1936] AC 578 and *Badan Peguam Malaysia v. Kerajaan Malaysia* [2008] 1 CLJ 521; [2008] 2 MLJ 285 to name but a few.

[62] Perhaps the judgment that best encapsulates the point was expressed by Raja Azlan Shah LP (as His Royal Highness then was) in *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus* [1981] 1 MLJ 29 as follows:

> *In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters or ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way – 'with less rigidity and more generosity than other Acts' (see Minister of Home Affairs v. Fisher) [1973] 3 All ER 21. A constitution is sui generis, calling for its own principles of interpretation,* suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation.
>
> (emphasis added)

[63] Read liberally and broadly, therefore, the activity of unlawful gambling falls within the prohibited "action" in para. (a) in art. 149(1) FC.

[64] The Federal Court also traced the history of POCA from its inception in 1959 and said that the Legislature had always intended for unlawful gambling to be included. Although there was some variation to the wordings, the original intent of Parliament still manifests itself in that unlawful gambling is one of the targeted activities under POCA.

[65] In fact, the deletion of the word "habitual" meant that the intended target was to be even more all-encompassing.

[66] Needless to say, the concept of *stare decisis* binds this court to follow and adopt the reasoning of the Federal Court in *Zaidi Kanapiah* in respect of this issue.

[67] The contention that the grounds of detention and allegations of fact, namely, that unlawful gambling activities do not fall within the scope of POCA, is, therefore, with respect misconceived and without merit.

A *(b) POCA Has No Application To The Detenus As They Are Foreign Nationals*

[68] The applicants contend that POCA does not apply to non-citizens because art. 151(1)(b) FC only makes reference to citizens.

[69] Article 151 FC reads as follows:

B 151. Restrictions on preventive detention

(1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention:

(a) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the
C grounds for his detention and, subject to Clause (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;

(b) no citizen shall continue to be detained under that law or
D ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the yang di-
E Pertuan Agong may allow.

(2) An advisory board constituted for the purposes of this Article shall consist of a chairman, who shall be appointed by the Yang di-Pertuan Agong and who shall be or have been, or be qualified to be, a judge of the Federal Court, the Court of Appeal or a High Court, or shall before Malaysia Day have been a judge of the
F Supreme Court, and two other members who shall be appointed by the Yang di-Pertuan Agong.

[70] The applicants submit that art. 151 is an important feature of any law enacted pursuant to art. 149 FC as laws involving preventive detention constitute a serious invasion of personal liberty.

G **[71]** Learned counsel for the applicants goes on to submit that for the purposes of POCA, although no express provision is to be found in that Act itself which provides for a right to be heard before an Advisory Board, the Minister exercising his powers under s. 22 of that Act ie, POCA, created the Prevention of Crime (Advisory Board Procedure) Regulations 2014 which
H set out the procedure for making representations to an Advisory Board established under art. 151(2) of the Federal Constitution for those detained under POCA.

[72] The applicants make reference to reg. 11 which reads as follows:

I (1) Whenever any detained person makes representations under these Regulations to the Advisory Board, the Advisory Board shall, within three months from the date of receiving such representations, or within such

longer period as the Yang di-Pertuan Agong may allow, consider the representations and make recommendations to the Yang di-Pertuan Agong.

(2) Upon considering the recommendations of the Advisory Board under this regulation, the Yang di-Pertuan Agong may give the Board such directions as he thinks fit regarding the order made by the Board and every decision of the Yang di-Pertuan Agong shall be final and shall not be questioned in any court.

[73] It was pointed out that reg. 11 provides a right to any detained person to make representations to an Advisory Board which shall within three months of receiving such representations make representations to the Yang di-Pertuan Agong who shall upon considering the recommendations give the Board directions as he thinks fit regarding the order made by the Board.

[74] However, the applicants contend that that provision is very different from art. 151(1)(b) which is limited to citizens and not to any detained person as set out in reg. 11.

[75] It was submitted thus that the powers of the Advisory Board under the FC are to consider representations made by citizens.

[76] It was further submitted that as reg. 11(2) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 purports to extend the power of the Advisory Board to consider representations of any detained person, it is inconsistent with art. 151(1)(b) of the FC and to that extent void under art. 4 of the FC.

[77] The applicants cite an additional reason why POCA is not applicable to non-citizens and that is s. 23(2)(b) of POCA which empowers a Minister to make regulations which require registered persons to substitute their identification cards with special identification cards which identify them as registered persons. This provision is also mandatory.

[78] To this end, it was submitted that the Prevention of Crime (Identity Card) Regulations 2017 was made. Under reg. 2 of these Regulations, "identity card" is defined to mean an identity card issued under sub-reg. 3(3) which reads as follows:

The Director General shall, upon receiving an application from a registered person, issue to the registered person an identity card in brown colour which shall contain any code and information as may be determined by the Director General.

[79] It is submitted that identity cards under these regulations mean Malaysian identity cards.

[80] It was further submitted that under reg. 3(1) a registered person shall within seven days from the date he is registered under the Act make an application for an identity card.

[81] The applicant also cited reg. 3(2) which reads as follows:

> When a registered person makes an application for an identity card, the registered person shall surrender his original identity card or temporary document of identity issued to him under the National Registration Regulations 1990 to the registration office for the purpose of revocation

[82] The applicants also cited reg. 3(4) as follows:

> Any registered person who contravenes sub regulation (1) commits an offence shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

[83] It was thus submitted that these mandatory provisions which carry penal consequences have no application to non-citizens as they have no identity cards or temporary documents of identity issued to them under the National Registration Regulations 1990.

[84] It was finally submitted that in the case of an arrest and detention of a person under POCA, the mandatory procedural requirements for registered persons are clearly designed to apply to citizens only and not to non-citizens who have no identity cards or temporary documents of identity as defined under the National Registration Act 1959.

[85] With regard to the applicants' argument that POCA only applies to citizens, as learned Senior Federal Counsel pointed out, the long title and preamble to POCA do not support this contention.

[86] For ease of reference, the long title and preamble to POCA are again reproduced as follows:

> An Act to provide for the more effectual prevention of crime throughout and for the control of criminals, members of secret societies, terrorists and other undesirable persons, and for matters incidental thereto.
>
> WHEREAS action has been taken and further **action is threatened by a substantial body of persons both inside and outside Malaysia** to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;
>
> AND WHEREAS Parliament considers it necessary to stop such action;
>
> NOW, Therefore, pursuant to Article 149 of the Federal Constitution IT IS ENACTED by the Parliament of Malaysia as follows:
>
> (emphasis added)

[87] As can be seen, there is a clear reference to action taken both inside and outside Malaysia. Now while it might be argued that the reference to persons outside Malaysia refers to a situation where the non-citizen person must be physically outside of Malaysia, there is no basis to support that view.

[88] The preamble is clear that POCA's net was intended to be cast far and wide enough to cover both persons whether inside Malaysia, namely, citizens, as well as persons outside Malaysia, that is, non-citizens. A

[89] Once again employing the oft-quoted maxim that Parliament does not legislate in vain, it is to be taken that if the Legislature had intended POCA to apply to only citizens and to exclude non-citizens from its ambit, it would have expressly said so. B

[90] The respondents also made reference to s. 3 of POCA reproduced as follows:

> Arrest and production before a Magistrate C
>
> 3(1) **A police officer may without a warrant arrest any person** if he has reason to believe that grounds exist which would justify the holding of an inquiry into the case of that person under this Act.
>
> (1A) When a person is arrested under subsection (1), the case shall be referred by the police officer to the Public Prosecutor for direction not later than seven days from the date of arrest. D
>
> (2) **Any person** arrested under subsection (1) shall, unless sooner released, be taken without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) before a Magistrate.
> (emphasis added) E

[91] The reference to the word "any person" in both sub-s. (1) and (2) shows that the reach of the provisions specifically with regard to the arrest and production before a Magistrate were clearly not meant to distinguish between citizens and non-citizens. Again, Parliament would have expressly stipulated otherwise if such an intention was envisaged. F

[92] The respondents also referred to art. 151(1) FC which for purposes of ease of reference is again reproduced as follows:

> Restrictions on preventive detention
>
> 151(1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention: G
>
> (a) the authority on whose order **any person** is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to Clause (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be; H
>
> (b) **no citizen** shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow. (emphasis added) I

[93] Here, the respondents argue that there is an express distinction made between "any person" in para. (a) and a "citizen" in para. (b) above.

[94] So, while any person detained (citizen or non-citizen) is entitled to be informed of the grounds of detention and given the opportunity of making representations, a citizen is entitled to have his representations considered within three months of the receipt of his representations failing which he shall not be detained further.

[95] Non-citizens have a right to make representations pursuant to para. (a) above but they have no such right to have their representations considered within three months but their representations can be considered at any time. This is a permissible distinction expressly authorised by the FC itself.

[96] As in most cases, where no time is expressly stated, it is axiomatic that a reasonable time frame applies.

[97] Since art. 151 FC applies to any laws that provide for preventive detention, the constitutionality of reg. 11(2) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 cannot be questioned as the two are not inconsistent with each other.

[98] The Federal Court case of *Re Tan Boon Liat @ Allen & Anor Et Al; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri & Ors And Chuah Han Mow v. Menteri Hal Ehwal Dalam Negeri & Ors And Subramaniam v. Menteri Hal Ehwal Dalam Negeri & Ors* [1977] 1 LNS 110; [1977] 2 MLJ 108 referred to by the applicants can be distinguished because that case concerned the rights of citizens only and did not consider the rights of non-citizens.

[99] With regard to the second argument advanced by learned counsel for the applicants, I agree with the submission raised by learned SFC for the respondents that non-citizens detained under POCA are susceptible to subsequent action being taken against them pursuant to the Immigration Act 1959/63.

[100] Thus, pursuant to s. 9(1)(c) of the Immigration Act 1959/63, the Director General of Immigration (DG) can take action as follows:

> Director General's power to prohibit entry, or cancel any Pass or Permit
>
> 9(1) Notwithstanding anything contained in this Act or in any subsidiary legislation made under this Act, the Director General may:
>
> ...
>
> (c) cancel any Permit at any time by writing under his hand, if he is satisfied that the presence in, or entry into, Malaysia of the holder of any Permit is, or would be, prejudicial to public order, public security, public health or morality in Malaysia or any part thereof.

[101] Once the DG takes the action of cancelling the permit of a non-citizen, deportation to their country of origin follows pursuant to s. 32 of the Immigration Act 1959/63 which reads:

> Removal of illegal immigrants
>
> 32(1) Any person who is convicted of an offence under section 5, 6, 8 or 9 shall be liable to be removed from Malaysia by order of the Director General:
>
> Provided that no citizen convicted of an offence under section 5 shall be ordered to be removed from Malaysia under this subsection.

[102] There is, therefore, no question of s. 23(2)(b) of POCA or reg. 2 of the Prevention of Crime (Identity Card) Regulations 2017 coming into operation as far as non-citizens are concerned.

[103] The argument mounted by the applicants on this ground are also, therefore, misconceived.

[104] In addition to this, any argument that laws relating to preventive detention only applies to citizens and not to non-citizens would offend the equality provisions under art. 8 of the FC as follows:

> 8. Equality.
>
> (1) All persons are equal before the law and entitled to the equal protection of the law.
>
> (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

[105] There cannot be and exist therefore, a situation where while a citizen is subject to the full force of the law for committing murder or robbery, the non-citizen is immune from such acts.

[106] This is of course consistent with the general scheme of legislation relating to criminal laws in that laws such as the Penal Code and Dangerous Drugs Act 1952 apply equally to non-citizens and citizens alike.

[107] It would be anathema to the preservation of law and order and thus against public policy in this country if a situation where non-citizens are exempt from the reach of laws including those pertaining to preventive detention were to obtain.

A **[108]** To further illustrate the point that if Parliament had intended a particular result or outcome, it would have expressly said so, reference can be made to sub-art. (5) of art. 5 FC which relates to the liberty of the individual, which expressly excludes cls. (3) and (4) which concern the right to a person detained to be informed of his grounds of arrest and to be
B produced before a Magistrate within 24 hours, from applying to an enemy alien.

[109] This necessarily means therefore, that art. 5 would apply to citizens and non-citizens alike unless the non-citizen is considered an enemy alien. This again is a distinction made between citizens and non-citizens expressly
C permitted by the FC.

[110] In the premises, the applicants' application for the writ of *habeas corpus* to be issued is dismissed.

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